IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

WP(C).No. 24370 of 2006(A)

PETITIONER:

MESSRS.OBERON TRADING CORPORATION,
THE ARCADE, KARAMANA, THIRUVANANTHAPURAM
REPRESENTED BY ITS PARTNER M.M.ASIF, AGED 28 YEARS
SON OF M.A.MOHAMMED.

BY ADV. SRI.K.P.DANDAPANI (SR.)
SRI.M.SREEKUMAR

RESPONDENTS:

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1. STATE OF KERALA REPRESENTED BY
SECRETARY TO GOVERNMENT, LOCAL SELF GOVERNMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

2. THE CHIEF TOWN PLANNER,
THIRUVANANTHAPURAM.

3. CORPORATION OF KOCHI REPRESENTED BY
ITS SECRETARY, CORPORATION OFFICE, KOCHI.

4. THE ASST.EXECUTIVE ENGINEER,
ZONAL OFFICE, OFFICE OF KOCHI CORPORATION,
KOCHI.

5. THE TRIBUNAL FOR LOCAL SELF GOVERNMENT
INSTITUTIONS, THIRUVANANTHAPURAM
REPRESENTED BY ITS REGISTRAR.

BY ADV. SRI.M.K.CHANDRAMOHAN DAS,SC,COCHIN COPN FPR R3 & R4
GOVERNMENT PLEADER SRI.K.J.MOHAMMED ANZAR FOR R1 & R2

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Pius C. Kuriakose, J.

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W.P.(C) No. 24370 of 2006

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Dated this the 30th day of October, 2007

JUDGMENT

Petitioner, a partnership firm, is the owner in possession of 1.80 acres of land comprised in Sy. No.154/8-1, 8-3, 9A1, 9A2, 9B of Edapally Village in Kanayannur Taluk. The petitioner applied for permission to the Corporation on 10-6-2005 for putting up a multi-storied residential building. Ext.P1 is the permit. The petitioner claims that Ext.P1 enables the petitioner to put up a multi-storied residential apartment building on a commercial basis. After obtaining the permit, the civil work was started. It was then felt by the petitioner that construction of a commercial building would be more viable in the area. Accordingly, the petitioner submitted application for a change in land use. The above application was allowed and Ext.P5 building permit was issued to the petitioner on the basis of Ext.P4 order. While proceeding with the construction on the strength of Ext.P5, Ext.P6 stop memo was issued by the Corporation alleging that the building was being constructed without prior permission. To Ext.P6, the petitioner submitted Ext.P7 objection refuting the allegations. Against Ext.P6, the petitioner preferred an appeal to the Tribunal for Local Self Government Institutions, Thiruvananthapuram along with a petition for

stay. Exts.P8 and P9 respectively are the appeal and the stay petition. In Ext.P8 appeal, the Corporation filed Ext.P10 objections. It was conceded by the Corporation through Ext.P10 objection that the revised plan was approved and permit was issued to the petitioner on 8-5-2006 viz., Ext.P5. However, Ext.P6 was sought to be justified on the ground that the Chief Town Planner had sent a letter on 12-6-2006 directing the Corporation to keep in abeyance the execution of the orders issued for change land use from Town Planning Schemes. Ext.P11 is copy of the letter issued from the Office of the Chief Town Planner to the Secretaries of various Municipalities and Corporations . According to the petitioner, the directions in Ext.P11 are not lawful and are beyond the authority of the Chief Town Planner. It is contended that Ext.P11 could not have any application to the case like the present one as building permit had already been issued by the Corporation. It is also pointed out that Ext.P11 was a general direction and on the basis of a general direction, it was unlawful to keep in abeyance construction works on the strength of permits validly issued. The petitioner submits that the Tribunal was convinced of the fact that Ext.P6 stop memo issued to the petitioner was without jurisdiction and was vitiated by illegal exercise of jurisdiction. Hence, the Tribunal set aside Ext.P6. But the petitioner is aggrieved in that the tribunal has made certain observations to

the effect that the order therein will not in any way affect the authority of the 4th respondent to take appropriate action for giving effect to the communication Ext.P11. The grievance of the petitioner is that even though Ext.P6 stop memo was set aside, the tribunal virtually upheld Ext.P11 communication issued by the Town Planner to various authorities. Ext.P12 is copy of the tribunal's order.

2. The petitioner challenges Ext.P12 on various grounds in the writ petition and seeks a writ of certiorari quashing Ext.P12 to the extent to which Ext.P11 has been upheld by the tribunal. The petitioner also prays for issuance of a writ of mandamus commanding respondents 3 and 4 to forbear from interfering with the right of the petitioner's to construct the building in accordance with Ext.P5 building permit.

3. On behalf of the 2nd respondent Chief Town Planner, a detailed counter affidavit has been filed. Ext.R2(a) produced along with the same is copy of G.O.(Rt) No.1797/06/LSGD dated 29-7-2006. It was issued by the Government as per the judgment in O.P.No.874/97 holding that Town Planning Act does not confer any power on the Government to tinter with an approved development scheme to give exemptions to individuals from the provisions of the scheme. Along with the counter affidavit Ext.R2(b) is also produced. Ext.R2 (b) is order issued from the office of the Chief Town

Planner constituting a Technical Committee for undertaking various of the town planning schemes in the State. Ext.R2(c) letter dated 18-6-2006 from Government to the Chief Town Planner by way of clarification is also produced. A detailed reply affidavit has been filed by the petitioner. Along with the reply affidavit G.O.(MS)No.143/07/LSGD dated 31-5-2007 issued by the Government sanctioning the Structure Plan (General Town Planning Scheme) for Central City of Kochi is produced as Ext.P13. It is pointed out that as per paragraph 4.13 of Ext.P13 Government Order, commercial use is permitted in the area where the petitioner has put the building. It is contended that in view of Ext.P13 G.O., Ext.P11 cannot be of any relevance.

4. It is pointed out that permit was issued by the Corporation after remitting an additional amount of Rs.43.78 lakhs as the fee for the building permit for constructing a commercial building. Further points are that though this Court had stayed Ext.P11 by order dated 18-9-2006 the 1st respondent issued Ext.P14 communication to the 3rd respondent Corporation to take up appropriate action for revocation of the permit and based on Ext.P14, show cause notice was issued.

5. Heard both sides.

6. Having regard to the submissions addressed and the various documents placed on record, particularly Ext.P13, I am of the view that in view of the changes introduced in Ext.P13 to the structure plan for Central City of Kochi, Ext.P14 and Ext.P15 cannot be of any relevance. As per Ext.P13, commercial uses are permitted in the area where the constructions have been taken up by the petitioner.

7. In the result, the writ petition will stand allowed granting both the prayers in the writ petition. Hence, Ext.P12 to the extent the same uphold Ext.P11 is quashed. There will be a direction to respondents 3 and 4 to for bear from interfering with the petitioner's right to construct a building on the strength of and in accordance with Ext.P5 permit without being affected by Ext.P11. There will be a further direction to the 3rd respondent, the Secretary of the corporation of Cochin, to number the building once construction is completed by the petitioner.

Pius C. Kuriakose,
Judge.

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